

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

WILLIAM KRISSTOFER WOLF,
Defendant.

Criminal Docket
No. 15-49-BLG-SPW
Court of Appeals
No. 16-30065

TRANSCRIPT OF SENTENCING PROCEEDINGS

Heard in Snowy Mountains Courtroom
James F. Battin United States Courthouse
2601 Second Avenue North
Billings, Montana
March 3, 2016
10:33 a.m.

BEFORE THE HONORABLE SUSAN P. WATTERS

UNITED STATES DISTRICT JUDGE

TINA C. BRILZ, RPR, FCRR
Official Court Reporter
United States District Court
James F. Battin United States Courthouse
2601 Second Avenue North, Room 4209
Billings, Montana 59101

Proceedings recorded by mechanical stenography, transcript
produced by computer.

A P P E A R A N C E S :

PRESENT ON BEHALF OF THE PLAINTIFF, THE UNITED STATES OF AMERICA:

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and

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- NATIONAL SECURITY DIVISION
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PRESENT ON BEHALF OF THE DEFENDANT, WILLIAM KRISSTOFER WOLF:

MR. MARK S. WERNER
Assistant Federal Defender
FEDERAL DEFENDERS OF MONTANA
- Billings Branch
2702 Montana Avenue, Suite 101
Billings, Montana 59101-2372

1 The following proceedings were had:

2

3 THE COURT: Please be seated.

4 Emily, would you please call the next matter on the
5 calendar.

6 CLERK OF COURT: Yes, Your Honor.

7 The court has set aside this time to hear the matter of
8 CR-15-49-BLG-SPW, United States versus William Krisstofer Wolf.

9 This is the time set aside for a sentencing.

10 THE COURT: And for the record, Bryan Whittaker and
11 Danya Atiyeh?

12 MS. ATIYEH: Atiyeh. That's right, Your Honor.

13 THE COURT: Is that close? Okay.

14 Appear on behalf of the government. Mark Werner appears
15 on behalf of the defendant. The defendant is present.

16 I have received and reviewed the presentence report and
17 the sentencing memoranda filed by the parties.

18 Mr. Whittaker, did you receive and review the presentence
19 investigation report?

20 MR. WHITTAKER: Yes, Your Honor.

21 THE COURT: Do you have any objections to that
22 report?

23 MR. WHITTAKER: We do not.

24 THE COURT: Mr. Werner, did you receive and review
25 the presentence report?

1 MR. WERNER: Yes, Your Honor.

2 THE COURT: And did you have an opportunity to go
3 through that report in its entirety with Mr. Wolf?

4 MR. WERNER: Yes, Your Honor.

5 THE COURT: And you have a couple of objections to
6 that report; correct?

7 MR. WERNER: I'm objecting to the two enhancements
8 that are set forth in the revised presentence report.

9 THE COURT: Okay.

10 So, in the addendum to the presentence report, there is
11 objection Number 1. Are you -- which talks about some comments
12 made in paragraph 6 of 26.

13 Are you withdrawing that objection? It doesn't affect the
14 guideline calculation. It was just that --

15 MR. WERNER: Oh, Judge, I'm not asking for
16 adjudication on that. I'm asking for adjudication on the two
17 sentencing enhancements in the underlying rationale.

18 THE COURT: Okay.

19 So, that was mostly to note the defendant's position.

20 MR. WERNER: Yes. Mr. Wolf wanted to preserve his
21 record.

22 THE COURT: Okay.

23 Very good.

24 So, the defendant is objecting to the four-level
25 enhancement that the presentence author has recommended. And

1 that enhancement is pursuant to United States Guidelines
2 Section 2K2.1 Sub (b)(6)(B), and then the defendant is
3 objecting to the two-level enhancement for obstruction of
4 justice pursuant to Sentencing Guideline Section 3C1.1.

5 So, Mr. Whittaker, do you have testimony related to -- to
6 those objections today?

7 MR. WHITTAKER: Yes. We have brief testimony, Your
8 Honor, and if it's permissible to the court, Ms. Atiyeh would
9 like to handle the guideline calculation part of the
10 government's case today, and then I would handle the sentence
11 that we would advocate before the court later in the hearing,
12 if that's permissible with Your Honor.

13 THE COURT: That's fine.

14 MR. WHITTAKER: So, we do have brief testimony and
15 argument about those two enhancements.

16 THE COURT: Go ahead. And then I'll hear from you,
17 Mr. Werner.

18 MS. ATIYEH: Your Honor, can I begin briefly with
19 some argument, and then call our witness?

20 THE COURT: Sure.

21 MS. ATIYEH: Thanks.

22 I'd like to start by discussing the 2K2.1(b)(6)(B)
23 four-point enhancement. And the government filed in its
24 sentencing paper, attachment A, which fairly exhaustively lists
25 all of the defendant's statements about his intent to commit

1 other crimes using the machine gun.

2 The 2K2.1 provision applies, according to the application
3 notes, if the firearm facilitated or had the potential of
4 facilitating another felony offense.

5 And the probation office has identified in the PSR a
6 number of Montana Code offenses that apply in this case. They
7 mentioned assault with a weapon, assault on a peace officer,
8 and arson, which we've addressed in our sentencing memorandum.

9 I just wanted to note for the record, and I think we put
10 this in a footnote, that there are potentially any number of
11 other felonies that might also apply, including various
12 homicide felonies.

13 I don't want to go back through all of the comments that
14 the defendant made, because we listed them in our attachment.
15 I just wanted to draw the court's attention to the statement
16 that the defendant made just moments before he took possession
17 of the machine gun, when he told Dirty: "I just need to kill
18 the public officials." And went on to say: "I guarantee, the
19 first few politicians and judges that have their heads blown
20 off, the rest of them are going to go into hiding."

21 In his own testimony when he spoke about the gun, he
22 mentioned that when the war starts, I want to put this as
23 bluntly as possible: "I would rather go out and scare the
24 living hell out of some police officers who are going to
25 violate your civil rights."

1 All of these statements go toward any number of these
2 offenses, assault with a weapon and assault with a peace
3 officer, which, as Your Honor is well aware, an assault can
4 take place by simply threatening a peace officer with a gun.
5 Even the defendant's own testimony, even if he weren't to shoot
6 these police officers, he'd be committing an assault by
7 threatening them with the machine gun.

8 And the defendant consistently testified that this was in
9 the event of this war that was going to happen with the
10 government.

11 And what I really want to highlight for Your Honor is that
12 this war is something that was imminent in the defendant's
13 mind. He said in his own testimony, "if" is no longer a
14 question in his mind. This was something that was imminent.
15 And it's also something that is extrajudicial.

16 When the defendant was talking about the citizen's arrests
17 he wanted to enact, he talked about going to all sorts of law
18 enforcement and judicial authorities, going to the marshals,
19 going to the FBI, and going to the UN and going to the World
20 Court. And when they all turned him down, when they all said,
21 "This isn't the law. This isn't how it works," he wanted to go
22 ahead with it anyway.

23 And when the defendant's talking about a war, he's not
24 talking about the sort of thing where Congress is declaring war
25 on him. He's talking about a war that exists in his mind. And

1 that's the real -- the real threat here. These are crimes that
2 he was ready, willing, and able to commit once he got the gun
3 and once he decided that this war started.

4 When he purchased the machine gun, it was with the intent
5 to use it to facilitate all of these crimes, these assaults,
6 this arson. And that's why his statements just as he took
7 possession of the weapon is so critical, when he made that
8 initial statement, he's just about to take possession, and he
9 says: "I need to kill the public officials."

10 It's critical because that's what was on his mind when he
11 took possession of the gun. That's what he was thinking of;
12 that's what was going through his head. These are the crimes
13 that he was ready and willing to commit with the weapon.

14 And for that reason, the enhancement should be applied.

15 I'd next like to move to the instruction enhancement under
16 3C1.1, which provides for the two-level increase if the
17 defendant obstructs justice; and conduct that contributes to
18 the provision includes committing perjury or providing
19 materially false information to the court.

20 And the defendant gave materially false testimony in his
21 claim that he intended for the weapon to be a fully automatic
22 converted to a semiautomatic conversion. And that's what the
23 jury, in fact, found; this testimony was false when they
24 convicted him.

25 And the defendant -- of course, the defendant always has a

1 constitutional right to testify, but what he doesn't have a
2 right to do is to testify falsely.

3 I'd like to address a point that's made in the defendant's
4 sentencing memo. And I think this is -- this is at the top of
5 page 5, talking about Mr. Gray's telling the truth as to there
6 not being unrecorded conversations between himself and the
7 defendant. And I just wanted to clarify this point for the
8 record, because I think it was clear in both Mr. Gray and in
9 Special Agent Deurmeier's testimony, but there are, in fact,
10 unrecorded conversations between Mr. Gray and the defendant.
11 There were a number that we talked about before Mr. Gray began
12 wearing a wire in his meetings. And also, there was a brief
13 period of unrecorded testimony at the December 18th meeting
14 when Dirty got up to use the restroom and Mr. Gray and the
15 defendant continued to speak.

16 But what there aren't are any -- I guess I'll call them
17 unreported conversations. Mr. Wolf testified about meeting
18 Mr. Gray at multiple job sites, construction sites: A hardware
19 store in Bozeman, the Black Bull Subdivision. All of these
20 meetings, there was no report that exists in the FBI's files.
21 Mr. Gray never went to Special Agent Deurmeier and said that
22 these events happened, and their very existence was flatly
23 contradicted by Mr. Gray's testimony.

24 He was living and working several hours away in Roundup.
25 He wasn't anywhere in the area at the time of the events.

1 And Mr. Gray's testimony also flatly contradicted
2 Mr. Wolf's claim that they ever talked about an automatic
3 shotgun before December 18th at any of these unreported
4 meetings. Or that a meeting ever existed where Mr. Wolf gave
5 him an article describing the Saiga.

6 And we just wanted to call Special Agent Deurmeier very
7 briefly to clarify some of the information that was addressed
8 in the defendant's sentencing memorandum about what happened on
9 the December 18th meeting, and mention of the Saiga in an FBI
10 report, a 1023 report. So, could we call Special Agent
11 Deurmeier very briefly?

12 THE COURT: You may.

13 CLERK OF COURT: I'll have you raise your right hand.
14

15 MATTHEW DEURMEIER, having been called as a witness on behalf of
16 the United States of America, being first duly sworn according
17 to law, was examined and testified as follows:
18

19 CLERK OF COURT: Please take a seat on the witness
20 stand.

21 DIRECT EXAMINATION

22 BY MS. ATIYEH:

23 Q Good morning, sir.

24 Could you just state your name and spell it for the court
25 reporter, please.

1 A My name is Matthew Deurmeier. D-E-U-R-M-E-I-E-R.

2 Q I'd like to direct your attention very briefly to the
3 meeting that happened between the defendant and Mr. Gray and
4 Dirty on December 18th.

5 Do you remember this meeting?

6 A I do.

7 Q And did you meet with Mr. Gray after the December 18th
8 meeting?

9 A I did. Minutes after the meeting.

10 Q I'm sorry?

11 A Minutes after the meeting, we met.

12 Q What did you talk about?

13 A As was our common procedure, whenever he met with
14 Mr. Wolf, he would meet with me shortly thereafter, and I would
15 debrief him. I would ask him what was said, what he observed,
16 regarding the meet between him and Mr. Wolf.

17 Q So, at this meeting, there was Mr. Gray present and also
18 Special Agent Rogers?

19 A Correct.

20 Q And what did they tell you about what had occurred at the
21 meeting?

22 A As they were approaching me, they were both discussing
23 their surprise that Mr. Wolf had brought up a Russian automatic
24 shotgun. Neither -- according to their reactions, neither
25 Special Agent Rogers nor Mr. Gray had heard of such a weapon.

1 And when they told me that, I was surprised, as well, because I
2 had not heard of that weapon, as well.

3 Q And at some point during your conversation, did you talk
4 with Mr. Gray specifically about what type of Russian automatic
5 shotgun the defendant had mentioned?

6 A I did. I asked Mr. Gray directly what did he observe over
7 the course of the meeting. Just so I could cover everything
8 from what he observed from the very beginning to the very end.
9 And he said at one point, as Agent Rogers left the table, it
10 was just the two of them, and at that time -- or the two of
11 them, meaning Mr. Wolf and Mr. Gray. And at that time,
12 Mr. Wolf brought up the topic of incendiary rounds for a
13 shotgun, and then he mentioned specifically a Saiga shotgun.
14 And that is what Mr. Gray reported to me on that day.

15 Q And that is what you memorialized in your 1023 form?

16 A That is correct.

17 MS. ATIYEH: Nothing further.

18 THE COURT: Cross-exam, Mr. Werner?

19 MR. WERNER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WERNER:

22 Q Agent Deurmeier, just so I understand, I guess you're
23 saying -- and when you talked to Ed Gray after the December 8th
24 meeting between the three of them, that's what you're talking
25 about; right?

1 A Yes, sir.

2 Q Mr. Gray basically told you that there was, of course, an
3 unrecorded conversation between the two of them when Agent
4 Rogers went to the bathroom; right?

5 A Yes.

6 Q And are you saying that that was the point in time when
7 the defendant disclosed that he wanted a particular type of
8 shotgun, a Saiga? Is that what you're saying?

9 A Yes.

10 Q Okay.

11 All right.

12 So obviously, Mr. Gray, as counsel for the government
13 acknowledges, learned that in an unrecorded conversation;
14 right?

15 A (No response.)

16 Q That he wanted the Saiga?

17 A Yes.

18 Q He learned that in an unrecorded conversation?

19 A Yes. Mr. Wolf told Mr. Gray that he wanted a Saiga
20 shotgun, and that conversation was not recorded, because
21 Mr. Rogers was not at the table.

22 Q I'm sorry. Say that again.

23 A Mr. Wolf told Mr. Gray that he wanted a Saiga shotgun, and
24 that conversation was not recorded, because Special Agent
25 Rogers was not at the table.

1 Q Okay.

2 So, they did have unrecorded conversations?

3 A They had that unrecorded conversation on that day, yes.

4 Q And it's your position, the government's position, that
5 they had no other unrecorded conversations at any time?

6 A No. Prior to that time, the topic of a Russian automatic
7 shotgun had not come up in any reported contacts between
8 Mr. Gray and Mr. Wolf, according to what he reported to me.

9 Q So says Mr. Gray?

10 A Correct.

11 Q Mr. Wolf says otherwise; right?

12 A That is what he testified, yes.

13 Q Right.

14 So we have a conflict in the testimony --

15 A Yes.

16 Q -- between Gray and Mr. Wolf?

17 A Correct.

18 Q Thank you.

19 (A brief off-the-record discussion was had between
20 Mr. Whittaker and Ms. Atiyeh at counsel table.)

21 THE COURT: Do you have additional --

22 MS. ATIYEH: That's all we have from the witness,
23 Your Honor.

24 THE COURT: Okay.

25 You may step down.

1 (Witness excused from the witness stand.)

2 MS. ATIYEH: Certainly true, Your Honor, that there
3 is a contradiction between Mr. Gray and Mr. Wolf's testimony.
4 And I think it's clear from the jury's verdict that they
5 overwhelmingly credited Mr. Gray's testimony over Mr. Wolf.

6 Because what that evidence showed was that Mr. Wolf, in
7 fact, never asked for -- and what all of these conversations
8 are getting to -- never asked for this conversion from the
9 weapon -- from fully automatic to semiautomatic. That this
10 meeting on December 18th was the first time that a shotgun was
11 ever brought up.

12 And from that point on, the conversations went to talking
13 about getting a semiautomatic and converting it to a fully
14 automatic.

15 And the reason that we know that the defendant wanted a
16 semi converted to a full auto, rather than the other way around
17 is, in part, because of his own statements. We heard him say:
18 "Any fully auto is going to be able to handle most riot crowds
19 and cops." And frankly, there's just nothing on the recordings
20 that suggested that he wanted the conversion to go the other
21 way; from full to semiautomatic.

22 We had Mr. Gray's testimony on recross examination where
23 Mr. Werner asked him: "During the period leading up to you
24 showing him the video in February and March, Mr. Wolf did talk
25 to you and ask you whether or not this firearm was going to be

1 converted to semi auto; didn't he?"

2 And Mr. Gray responded: "Not that I remember."

3 Mr. Werner asked: "In fact, you kind of got perturbed
4 from his asking -- continuing to ask you that; didn't you?"

5 Mr. Gray responded: "No."

6 Mr. Werner asked: "Well, you say 'not that I remember.'
7 Is that your answer to that question?"

8 And Mr. Gray came back and said: "He never asked me, no.
9 I will rechange that. He never, ever asked about it being
10 semi. He always wanted full auto from the time that he brought
11 it up to us."

12 And Mr. Werner asked: "Except the times that he asked you
13 what was going on with the gun, and is it being switched to
14 semi auto?"

15 And Mr. Gray relied: "That never happened, no."

16 This is the evidence that was credited by the jury. And
17 part of the reason for that is because a full-auto-to-semi-auto
18 conversion is something that is effectively unheard of. I
19 couldn't say personally one way or another whether this is
20 something that's impossible or that has never happened. But
21 it's something that is exceedingly rare. We see any number of
22 criminal cases and any number of factual cases where we talk
23 about guns being converted, and the vast, vast majority of the
24 time, when we're talking about a firearm conversion, we're
25 talking a firearm being converted from semi to full auto.

1 And this concept of a fully automatic gun being converted
2 to a semiautomatic gun, it's something that's wildly unusual;
3 that's very unlikely. And it's the sort of thing that's so
4 unusual that if it would have happened, it would have been all
5 over these recordings. They would have been asking for
6 clarification. They would have been asking for additional
7 information, because it's not something that happens regularly.

8 And I think that's probably part of the reason why the
9 jury credited this testimony, is because it's, on its face,
10 somewhat incredible.

11 Mr. Wolf also testified about the barrel length of the gun
12 and claimed that he didn't know how long the barrel was, or
13 that he thought it was longer than the 18-inch, sawed-off legal
14 requirement. But the recordings were clear and at the diner
15 before taking possession of the gun, Dirty said: "I got the
16 barrel down to 16."

17 The court also saw the text messages where Mr. Wolf asked
18 for a mil barrel. And in his recorded phone call from the
19 jailhouse, he told his friend a mil barrel or military barrel
20 only comes in 14 inches.

21 And it seems like there may have been confusion about what
22 exactly the length was, whether it was 14, whether it was 16, I
23 think at some point, whether it was 17, but there was never any
24 confusion that this barrel was less than 18 inches.

25 And I've gone through sort of a number of material

1 falsehoods here, but given each one of them, the government's
2 position is that the obstruction enhancement was properly
3 applied here.

4 Thank you.

5 THE COURT: Okay.

6 Thank you.

7 Mr. Werner.

8 MR. WERNER: Your Honor, I did -- I did lodge an
9 objection, of course, to the four-point enhancement under
10 2K(b)(6)(B) that this firearm or ammunition was used in
11 connection with or with another felony offense; he had it with
12 the intent that it would be so used.

13 In its sentencing memorandum, and I think it was quoted
14 here in front of you, Judge, the government offers a quote from
15 Wolf to the effect that "when the war starts, I would rather go
16 out and scare the living hell out of some police officers."

17 And I'm not going to engage in the speculation that the
18 government does about what kind of a war. What war? In fact,
19 I'm asking the question: What war? Well, a war that was
20 coming, he felt; a war that would be started by the government
21 against the people who complained against its corruptness.

22 But are we talking about a real declared war? What kind
23 of a war? And that statement is an attempt to assault? That's
24 not an assault. That's not intent to assault. That's free
25 speech. It's talk.

1 Wolf's -- the government spends an inordinate amount of
2 time buttressing his so-called intent, his intent to possess
3 this weapon with another felony offense, based upon his
4 statements in public. They cite his dangerous character and
5 propensity for violence. They swear that Wolf was dead set,
6 Judge, on acting.

7 By golly, he even said so. And the government says his
8 words are reliable. And the court should take him at his word.

9 At the same time, they're pushing for an upward departure
10 for perjury; for his telling untruths. That he's an untruthful
11 person. Why are his words reliable? The government believes
12 him about some things and not about others, so they can cherry
13 pick that.

14 This automatic weapon, he testified, was intended, as
15 illegal as it was, for his own and his home's defense. Not
16 believing that; but we'll believe he'll bomb a courthouse? On
17 what evidence, Judge? Did he have a bomb? What steps did he
18 take to do that that verify the intent, they bring out, to
19 commit arson, even?

20 Twenty-five-some months of surveillance, Judge, by the
21 Federal Bureau of Investigation. And who did Wolf specifically
22 threaten? He didn't threaten Judge Rick West. He didn't
23 threaten Sheriff Brian Gootkin or County Attorney Marty
24 Lambert. There's no evidence that he made statements that he
25 was going to harm these particular people that they mentioned

1 in their sentencing memorandum.

2 And Sheriff Gootkin, he said: "Sheriff Gootkin stays away
3 from me." That's not a threat. That's a threat? It's bravado
4 talk.

5 He didn't threaten Agent Deurmeier. You certainly would
6 have heard that if he had. They had two face-to-face
7 interviews. And certainly, Wolf knew he was being investigated
8 by Agent Deurmeier. He didn't threaten him or these other
9 specific people mentioned in the government's memorandum to
10 anyone else, either. That "this is what I'm going to do to
11 this particular person."

12 So my question is, concerning this enhancement: Where is
13 the intent? He talked. It's all in his talk. He exercised
14 his right to free speech. He talked big. He talked extreme.
15 He made himself sound like, and he wanted people to believe
16 that he was going to do that. And talk is cheap.

17 I, Judge, would have at least thought, I would have at
18 least thought that he had been spotted in a prior armed
19 standoff of some type with a government official, or at least
20 he had been in some hostile encounter with a law enforcement
21 officer. Just one occasion. And hadn't been in any of those
22 things; nor had he ever had such an encounter.

23 What he did was he talked. He talked on webcasts; he
24 talked to other men who he thought were of like mind who
25 happened to be undercover agents. And they fed off each other.

1 Same happened on the webcasts. The government mentioned that
2 Gary Hunt was on his -- was a webcast. Now, he was extreme. I
3 don't know how many times Wolf said in response to what Hunt
4 proclaimed: "We have to do this by lawful means first before
5 anything like that comes about."

6 And the government knows this, they made the tapes of
7 these webcasts.

8 They treated him saying: "I think there's a war coming.
9 And the judges and the police officers, they're not going to be
10 safe."

11 That's the talk and intent of assault? That's the intent
12 to assault? This gun can handle riots and law enforcement.
13 That's intent to use the weapon to kill a particular person?
14 It isn't. It's talk. He's still impressing everybody,
15 including Dirty.

16 Judge, William Wolf exercised his right to free speech
17 under the First Amendment in his webcasts and in his
18 conversations with people he thought were with him in some of
19 their thoughts that the government was corrupt.

20 Now, Judge, the government could pay attention to him and
21 they did. They could be concerned, and they were. They could
22 monitor him, and they did. He wasn't charged with assault
23 during this time. With intending to assault someone. Because
24 there weren't any facts for making such a charge.

25 To aid and abet this enhancement on this gun, they talk

1 about the flamethrower. He never had a flamethrower; he never
2 possessed one; he never had the parts to make a flamethrower.
3 There was no evidence of him assembling a flamethrower. He
4 loved talking about them. He was interested in them. He was
5 interested in weaponry. Many men are. He never possessed one;
6 he never built one.

7 All this talk about constructing one. Didn't happen. No
8 witness verified that. Ed Gray in his undercover capacity
9 snooped around his entire house on one of his unrecorded
10 visits. Nothing. Nothing incriminating. So what the
11 government is doing is speculating.

12 William Wolf, Judge, as you know, is 53 years old. Where
13 is his violent history? Convictions? Where is his history of
14 using weapons to injure or even threaten people? A person?
15 There aren't. There aren't any victims like that out there.

16 They stated and quoted that he would -- that he said that
17 he would get the sheriff to haul a judge off the bench right in
18 front of him, or if he was the sheriff, he would do so, because
19 the judge was violating his oath of office. And the government
20 called that chilling. Who was the judge? Which judge? I
21 could hear that banter by guys sitting around impressing each
22 other at McDonald's, Judge. I can. He's talking.

23 He's talking because he's frustrated, as are other people.

24 The government, Judge, in supporting this enhancement,
25 downplays his lack of criminal history. But I know that they

1 would not downplay it if he had a criminal history. And
2 especially, of violence; of assaults.

3 And of course, a person's criminal history is the way many
4 courts decide whether or not he's truly a danger and whether to
5 enhance a sentence because of it, because he's demonstrated it.

6 If not in actual convictions, then in verifiable criminal
7 acts of violence. And my question is: Where are they? They
8 were not presented.

9 He, in essence, says: Pay attention to me, everybody,
10 because I'm extreme. I'm an extreme guy. I'm not a nice guy.

11 The third thing here is: Drop a bomb on the courthouse.
12 Well, as I said, Judge, you know, law enforcement can and did
13 pay attention when he said things like that. But they didn't
14 charge him, because they couldn't charge him. Because it
15 wasn't an assault. It wasn't an express intent to go do that.

16 Rather, Judge, what the government is doing here, I
17 believe, is attempting to use the sentencing guidelines to
18 increase his sentence equal to or more than if they had charged
19 him. Charge him. Don't come in the backdoor of sentencing
20 when there isn't the evidence to charge him, let alone convict
21 him, of assaulting people or intending to assault people.
22 That's what's going on here. And it's a misuse of the
23 sentencing guidelines.

24 If the government wants to hold him accountable for
25 intending to assault a person, or attempting to assault a

1 person, then they should charge him. But they aren't in these
2 charges, Judge. There weren't any state charges to that
3 effect. And it's because they don't have it. They don't have
4 the facts. What they have is his talk, which bothered them;
5 which concerned them. And they have the sentencing
6 enhancements to misuse. They want a four-level enhancement
7 from the guideline, a base offense level, based upon his
8 demonstrated intent to assault with this weapon, and/or commit
9 arson or all these other crimes. Not based upon his criminal
10 history, Judge. Not based upon verifiable acts of violence
11 that he did. Not based upon threats he made to specific people
12 or threats uttered to someone else about specific people.
13 But talk.

14 And they even go further. They even want an extreme --
15 talk about extreme, an extreme upward departure, based upon the
16 same thing. The four-level enhancement isn't even warranted.

17 Concerning the two-point enhancement, Judge, the jury did
18 not believe Wolf, and when juries convict a defendant who
19 testifies, it means usually they didn't believe him or they
20 believed someone else.

21 It doesn't mean that there was perjury. If he said he was
22 going to lie or that he did lie, concerning his testimony,
23 obviously, that's proof of perjury. This is a fine line. And
24 talk about a way to chill somebody from testifying and
25 exercising their constitutional right.

1 This came down to Ed Gray's word. And Ed Gray wasn't any
2 stellar witness. He did say first, "as far as I remember."
3 And then he caught himself saying: "Well, I guess I better say
4 this, assert this," more strongly.

5 You may remember there were texts introduced in evidence
6 from Ed Gray to the defendant. I have in front of me one here
7 on January the 9th that "I'm going to be in town. I just
8 wondered if we could meet up for a minute tomorrow. Late
9 afternoon."

10 I mean, Ed Gray and him talked a lot. And so, it came
11 down to whether or not they talked about this gun.

12 And certainly, one -- if you want to speculate, you could
13 speculate that they certainly probably would have. And that Ed
14 Gray was the one not being truthful.

15 Judge, I believe these enhancements are improper. The
16 guideline range, based upon the type of weapon he bought, here
17 is the guideline range that should be applied. An enhancement
18 or an upward departure based upon what I've described is
19 improper.

20 And I note, to buttress that, the government says that --
21 asserts that Wolf didn't respect the law. Well, if you listen
22 to the web, he respected the Constitution a lot. And he didn't
23 respect it as an excuse to break the law.

24 He believed, as many did, that the Constitution was being
25 trampled on by government officials.

1 The jury found he broke the law by acquiring a sawed-off
2 machine gun. There was no finding -- they weren't asked to
3 find that he wanted this gun for any other reason other than
4 what he stated on the stand, home self-defense. And the
5 government's speculation about his intent or what the jury must
6 have thought, doesn't hold any -- doesn't have any weight.
7 They don't know what the jury thought about specific things.

8 Judge, he'll be deterred from doing something like this
9 again. He's been in county jail for 345 days. That's hard
10 time for his first criminal offense. And he's facing more.

11 He exercised his First Amendment rights, Judge. He spoke
12 in raw terms. The government heard what he said, decided to
13 monitor him for a long time. Nothing happened. They were
14 monitoring him. No offenses. He wasn't committing offenses.
15 He wasn't assaulting people. He wasn't threatening assaults
16 against people. He was railing against what he thought were
17 unconscionable acts by government officials.

18 And in the event of a war, when everything breaks loose,
19 "I need to be prepared. So do you." That's not assault. It's
20 not assault.

21 But then, Judge, he made things very difficult for
22 himself, because on December 18th, he made that statement that
23 was recorded to Agent Rogers: "Hey, see what you can do about
24 getting me a Russian automatic shotgun."

25 And that statement and what ensued, that's what he should

1 be sentenced on. The government spent an inordinate amount of
2 time at trial, here, setting forth his talk to make the court
3 improperly enhance his sentence beyond what this case was
4 about, without ever charging him with what they now say he is
5 guilty of: Attempting -- intending to assault people.

6 It never happened. They know it never happened. But this
7 is how they want to get that, almost more time for him than
8 they would have had if they would have charged him.

9 So, Judge, that's our position on these enhancements.

10 THE COURT: Thank you.

11 Is there anything further from the government?

12 MS. ATIYEH: Just a brief response, Your Honor.

13 Mr. Wolf talked. He talked and he talked, and then he
14 bought a machine gun. This guideline -- Mr. Wolf didn't commit
15 an assault. He didn't attempt to commit an assault. That's
16 not what this guideline is for. What this guideline is for is
17 whether he intended to commit an assault. The guideline in the
18 application note, I think it's Application Note 14(c),
19 specifically says: "Regardless of whether a criminal charge
20 was brought or a conviction obtained." That's not what's
21 relevant here.

22 What's relevant is his intent. And his talking, his
23 speech, his free speech, tells you what his intent was. It was
24 to kill the public officials. That's what he said after he
25 talked and talked and then bought a machine gun. The step he

1 took towards the assault was buying the machine gun. That's
2 his intent, that's where we find his intent in all of this free
3 speech.

4 And Your Honor, we should credit the words, credit his
5 testimony, credit the things he said before he was facing
6 prison time. Credit the things he said openly, the things he
7 said to Mr. Gray, and the things he said to Special Agent
8 Rogers. That's the testimony that we should be crediting here.

9 And it's the testimony that illustrates what his intent
10 was. And that's what the guideline is meant to address.

11 Regarding the two-point enhancement for perjury,
12 Mr. Werner said and he's right, that there is -- when a
13 defendant is convicted, there's a very fine line between
14 exercising your right to testimony -- or -- and a jury not
15 crediting you, and therefore, it being perjury. But it's a
16 line that was crossed here.

17 Mr. Wolf's testimony was not credible. And I went through
18 this in my previous argument about all the reasons it was not.
19 It was flatly contradicted by the other witnesses. It wasn't a
20 mistake, it wasn't simply exercising his right to testimony.
21 It was making materially false statements to this court. And
22 for that -- for those reasons, the obstruction enhancement
23 should be applied here.

24 That's all I have, Your Honor.

25 THE COURT: Well, I'm going to take up the perjury

1 enhancement first. And I think that this is a difficult
2 enhancement. I think it's a difficult enhancement for the
3 government, to be honest with you.

4 There isn't any doubt that there was testimony by the
5 government's witnesses that was different than the testimony
6 that Mr. Wolf ultimately gave during his direct and
7 cross-examination.

8 And that the government, in addition to testimony, had
9 recordings of Mr. Wolf's own statements.

10 With regard to whether or not Mr. Wolf and Mr. Gray had
11 met on additional occasions that weren't recorded, Mr. Gray
12 denied that. Mr. Wolf said they did.

13 Other than that conflicting testimony, there really is
14 nothing, other than the credibility of the witnesses, for the
15 court to say that was perjury.

16 For Mr. Wolf to testify that, really, what he had wanted
17 all along was an automatic shotgun converted to semiautomatic,
18 well, that wasn't borne out by the tapes, and it wasn't borne
19 out by the government's testimony.

20 But whenever a defendant chooses to exercise his right to
21 testify, it can't be shocking to anyone that his testimony
22 would be different from the testimony of the government
23 witnesses. Is it perjury because the recordings said
24 otherwise? Or the witnesses said that Mr. Wolf acted or talked
25 otherwise? Maybe. But I think it is a fine line. And for --

1 every time a defendant exercises his right to trial and then
2 exercises his right to testify, I think it's somewhat of a
3 slippery slope to say that if his testimony really is not
4 supported by the evidence, that then he perjured himself. I
5 know the government thinks they have a stronger case than that
6 to support that two-level enhancement.

7 But, I'm not convinced; and therefore, that objection is
8 sustained.

9 With regard to the four-level enhancement under Section
10 2K2.1 Sub (b)(6)(B), that objection is overruled.

11 The guideline does not require that these other offenses
12 for which the defendant intended the use of this fully
13 automatic shotgun actually be committed, as was pointed out by
14 the government's argument. And what is required under the
15 guideline, and, of course, guidelines are to do that, guide a
16 court in determining what is the appropriate advisory
17 sentencing guideline for any particular offense.

18 And the guidelines talk about relevant conduct. As we all
19 know in conspiracy cases, defendants can be held responsible
20 and accountable for actions of completely different individuals
21 under the guidelines.

22 So, it isn't that what the court considers with regard to
23 some of these enhancements that it's required that the
24 defendant actually commit the offense, that's the whole
25 relevant conduct idea. Here, this -- with this particular

1 guideline enhancement, it's not relevant conduct in my mind.
2 It's really just looking at the facts of this case.

3 Now, the plain language of that guideline, in my view,
4 makes this enhancement apply in this case. And that is, that
5 Mr. Wolf possessed a firearm with the intent that it would be
6 used in connection with another felony offense.

7 And we have his own words to look to in order to come to
8 the conclusion that that guideline applies.

9 Yes, the government watched and listened to Mr. Wolf for a
10 long period of time. That's how they amassed all of these
11 statements that Mr. Wolf made that they've set forth in
12 Government's Exhibit A to its sentencing memorandum. Maybe it
13 was talk to begin with.

14 But there's a difference between just talk and then
15 actually taking an affirmative step to acquire a weapon, such
16 as the automatic shotgun, that can carry out these offenses
17 that are described in Mr. Wolf's own statements.

18 He can't hide from his own words here. They are his
19 words. He didn't back down from them at trial.

20 And really, it's those words that caused him to come to
21 the attention of the United States government. Without any
22 prodding, he suggests and requests from Dirty and Mr. Gray "see
23 what you can do about getting an automatic Russian shotgun." A
24 weapon that Dirty testified he didn't even know existed and had
25 to look up on the Internet.

1 So, it wasn't like the weapon was suggested to Mr. Wolf.
2 Mr. Wolf asked for some assistance in acquiring one.

3 And it's no great leap at all to conclude that the reason
4 that Mr. Wolf wanted the Russian automatic shotgun was that he
5 intended to use that shotgun to carry out all of those things
6 he'd been talking about.

7 Was that his intent? Well, if it was just talk, he
8 wouldn't have gone that extra step, in my view, to actually get
9 a weapon that he had already described as, basically, being the
10 perfect weapon to take out a crowd, that he could attach a
11 flamethrower to, all of that -- all of that stuff that he
12 talked about. Did he do it? No. Thank God he was arrested as
13 soon as he took possession of the machine gun.

14 But to say that he had to be convicted of those crimes,
15 that's not what the guideline requires. Does the guideline
16 apply if he intended to commit those crimes, which based upon
17 his own statements, he clearly did? Yes, it does.

18 And you know, there's a lot of people who talk big.
19 There's a lot of people who are angry with the government.
20 There are people who bluster, and that's all they do. They
21 don't take affirmative steps, then, to acquire the means by
22 which to carry out the threats that they have made.

23 Even to say: "I just want to scare a few police
24 officers." That's assault. That's felony assault. Reasonable
25 apprehension of serious bodily injury is felony assault. And

1 it's assault with a weapon, if you use a weapon under Montana
2 law. You don't have to shoot them. You just have to scare
3 them. And you scare them by pointing that automatic shotgun at
4 them.

5 So, even if that was his intention, that fits -- that fits
6 the enhancement.

7 So, in my view, there's plenty here to justify the
8 enhancement. And therefore, the objection is overruled. And
9 the four-level enhancement will be applied.

10 So, given the court's rulings on the objections, the
11 presentence report will need to be amended. Specifically, on
12 page 9, paragraph 37, the adjustment for obstruction of justice
13 will be removed.

14 And therefore, the adjusted offense level is 22. And the
15 total offense level is 22.

16 And the resulting guideline range, then, is 41 to 51
17 months.

18 And there are other sections that need to be corrected
19 related to that change, I believe, also, Ms. Zink.

20 So, paragraph 72 on page 13 needs to be amended to read
21 that the total offense level is 22. Guideline range is 41 to
22 51 months.

23 That doesn't change the fine; does it, Ms. Zink?

24 PROBATION OFFICER ZINK: Your Honor, that's what I
25 was just thinking of really quick.

1 THE COURT: Okay.

2 (Probation Officer Zink reviewing documents.)

3 PROBATION OFFICER ZINK: It would change it, Your
4 Honor, to seventy-five hundred to -- from seventy-five hundred
5 to 75,000. That would be the new range.

6 THE COURT: Okay.

7 So, then paragraph 82 on page 14 needs to be amended to
8 read that new fine range of seventy-five hundred to 75,000.
9 And I think that is all of the corrections that would have to
10 be made to the presentence report.

11 So, with those rulings and those corrections, I will
12 otherwise rely on the presentence investigation report for
13 purposes of calculating the advisory guidelines.

14 I will summarize the applicable punishments for the
15 offenses under both the United States Sentencing Guidelines and
16 the applicable statutes.

17 We have now an adjusted offense level of 22, a total
18 offense level of 22. Mr. Wolf has zero criminal history
19 points, so his criminal history category is I. His advisory
20 guideline range is 41 to 51 months of imprisonment.

21 He is not eligible for probation under the guidelines. He
22 is subject to one to three years of supervised release, a fine
23 of seventy-five hundred to \$75,000; and a special assessment of
24 \$100. Restitution is not applicable under the guidelines.

25 For the charges of Count One, illegal possession of a

1 machine gun, in violation of 18 United States Code Section
2 922(o), and Count Two, possession of a firearm not registered
3 in the National Firearms Registration and Transfer Record, in
4 violation of 26 United States Code Sections 5841, 5845 Sub (a),
5 5861 Sub (d) and 5971, the maximum punishment on each count is
6 ten years' imprisonment; the maximum fine on Count One is
7 \$250,000; the maximum fine on Count Two is \$10,000; no more
8 than three years of supervised release on each count; and the
9 \$100 special assessment on each count.

10 Under the statute, Mr. Wolf is eligible for probation for
11 a period of one to five years. And again, the restitution is
12 not applicable.

13 So, do you agree, Mr. Whittaker, that that's an accurate
14 statement of the statutory and guideline provisions, given my
15 rulings?

16 MR. WHITTAKER: Yes, Your Honor.

17 THE COURT: Do you also agree, Mr. Werner?

18 MR. WERNER: Given your ruling, Your Honor, it
19 appears that you have calculated that correctly.

20 THE COURT: Okay.

21 And there was a forfeiture claim in the indictment. What
22 is the status of that claim, Mr. Whittaker?

23 MR. WHITTAKER: Your Honor, I guess I need to check
24 on the publication. We'll file the necessary paperwork. I'm
25 not sure if the publication period has run on that.

1 THE COURT: I didn't notice a preliminary order of
2 forfeiture. But, with this kind of gun, can you -- I mean, is
3 it automatic that ATF takes it, since it's illegal, or not?

4 MR. WHITTAKER: No. We need to dismiss the
5 forfeiture count, because the FBI has taken care of that
6 administratively, it's my understanding. Is that correct?

7 AGENT DEURMEIER: That's correct.

8 MR. WHITTAKER: I was confusing that with a different
9 case. I'm sorry. It's been taken care of. We need to dismiss
10 the forfeiture count.

11 THE COURT: Okay.

12 Forfeiture count is dismissed.

13 Okay.

14 Mr. Whittaker, you may make your sentencing argument at
15 this time.

16 MR. WHITTAKER: Your Honor, I've practiced in this
17 court now for a few number of years in front of Your Honor, and
18 I hope that Your Honor knows and understands that I try to be
19 reasonable and thoughtful about the sentences that I recommend
20 to the court.

21 And so it's not lost on me the fact that the government is
22 asking for a hundred-and-twenty-month sentence here, an upward
23 variance from the guideline calculation, even as the court has
24 amended the calculation. We would still ask for a sentence of
25 a hundred and twenty months.

1 And if I might just give a few of the reasons why we
2 believe a hundred and twenty months is necessary; it's
3 reasonable; it's not greater than necessary. I want to start
4 with Mr. Wolf's history and characteristics. And Mr. Werner
5 touched on this, and, of course, we addressed this in our
6 sentencing memo, that Mr. Wolf has no criminal history. And I
7 recognize that, Your Honor.

8 We recognize he has no criminal history. And I think the
9 court knows from my practice in this court, that the criminal
10 history is important. But it's not the end all, be all.

11 I stood here last week, Your Honor, with a defendant that
12 had 28 criminal history points. I did not ask for an upward
13 variance, because of the other factors in the case. And that's
14 what I ask the court to look at and I believe outweighs the
15 fact that Mr. Wolf has no criminal history in this case.

16 In this case, the criminal history does not capture the
17 true risk that Mr. Wolf poses to society. It's not a good
18 indicator.

19 In this case, this was an escalating case. Mr. Wolf did
20 talk for a long time. And Mr. Werner's right, that the talking
21 is not necessarily a crime. But it escalated. Mr. Wolf said,
22 in his own words, the time for talking was over. And then he
23 moved forward to acquire a fully automatic shotgun.

24 And as Your Honor knows, I think all of us in this
25 courtroom know, many of the mass shootings that have been in

1 the news in the recent months and years, were committed by
2 people with no criminal history. That criminal history does
3 not always predict how a defendant will act.

4 In this case, I suggest that Mr. Wolf's characteristics
5 and his words and his talking, are what gives the court an
6 indication of how he was going to act, and how he will act. He
7 was a self-proclaimed extremist. He was moving forward in his
8 own extreme movement. He sought out, in his own words, the
9 most devastating weapon he could find. He was building up to
10 something big.

11 And Your Honor, I think if you'll remember, the video
12 where Ed Gray showed Mr. Wolf Dirty firing the machine gun.
13 And Dirty put two rounds -- not two rounds, two clips through
14 the gun. And he shot at that plywood. And Dirty made the
15 comment that "body armor is not going to help when you look at
16 that plywood," and Mr. Wolf is heard on the recording laughing.
17 And then you hear him laughing again, and he says: "That's why
18 I wanted it."

19 Excited. He was thrilled that he would get to use the
20 full capabilities of that dangerous weapon against someone
21 wearing body armor.

22 That's what he wanted it for. He wanted to kill cops
23 that were wearing body armor.

24 And then he talks about, Your Honor, not only -- right
25 after that -- after he's laughing about getting that gun, he

1 talks about attaching the flamethrower to the gun, and if that
2 machine gun didn't kill them, he was going to kill them with a
3 flamethrower; light them on fire. And he makes the sound of
4 it. Remember that? The whoosh. You hear him describe how
5 it's going to sound. And he's excited about this.

6 He also talks about the way he's going to load the rounds
7 in that gun. He talks about how he's going to start with
8 buck-and-ball, and then eventually move to incendiary rounds,
9 to light the Kevlar on fire and watch them burn.

10 That's why he wanted it. That's what he said. "That's
11 why I wanted it." And are those statements reliable?
12 Mr. Werner suggests that there's some conflict in the
13 government's position about whether we should believe Mr. Wolf
14 or not. There's not. We say: Believe Mr. Wolf's intent when
15 he's talking to whom he believes are his co-conspirators.
16 Those are the reliable statements. That's what he wanted it
17 for.

18 That's his true intent.

19 Mr. Wolf tries to explain a couple of those statements,
20 and he tried to do that at trial. There was the one statement
21 that he made where he wanted it to clean house with. Your
22 Honor will remember that.

23 Now, he tried to claim: Well, that was just for home
24 defense. Well, even his trial testimony was contradictory to
25 that. He said he wanted it to, quote: "Go out and scare the

1 living hell out of some police officers." That doesn't sound
2 to me like he's going to use it at his house. He's going to go
3 out and scare the living hell out of police officers. That
4 weapon is not for home defense.

5 And then he claims that the "clean the streets" comment
6 that he made just had double meaning. But I ask you about
7 those pathetic attempts to explain those things away, are they
8 consistent with the many other violent acts that he described
9 and he espouses?

10 What about the statement where he talked about taking the
11 ammo off the dead bodies? Did he expect to have a bunch of
12 dead bodies stacked up at his house for home defense? No.

13 What about the judges being the targets. Did he expect a
14 bunch of judges to show up at his house who he would need a
15 shotgun to protect himself from?

16 What about the statement: "Any fully automatic shotgun is
17 going to handle most riot crowds and cops"? Did he expect to
18 have a riot crowd at his home, which was way back up in the
19 woods?

20 What about the comment: "Start shooting them at three to
21 400 yards"? That's how you'd go gopher hunting. Is that home
22 defense? No.

23 What about the statement: "The first few politicians and
24 judges that have their heads blown off, the rest of them are
25 going to go into hiding"? Did he expect that a bunch of

1 politicians and judges were going to show up at his house and
2 he was going to need to blow their head off at his home? No.

3 The shotgun was for affirmative use. It was to kill
4 public officials. And that's what he said he wanted it for.
5 He took the step of moving forward to acquire it. He wanted to
6 do the most damage possible. And at trial, he didn't back down
7 from this. He said he wanted to, quote: "Get the problem done
8 fast."

9 What about dropping 500 pounds of napalm through the roof
10 of the courthouse? That certainly wasn't going to happen at
11 his home. And roasting the Bear Cat with a flamethrower like
12 an Easy Bake oven. That wasn't going to happen at his home,
13 either.

14 I suggest, Your Honor, that Mr. Wolf has a very dangerous
15 character that -- that demonstrates the need for an upward
16 variance here.

17 Now, if I might address the nature and circumstances of
18 this offense, Mr. Wolf's comment about being extreme, I think
19 this is an extreme gun case, Your Honor. I've prosecuted a lot
20 of gun cases in my nine-plus years as a prosecutor. And I've
21 never seen a gun case like this one. I've never seen a gun
22 case that section 2K2.1 doesn't have the ability to capture the
23 full extent and nature of the circumstances of this offense.
24 Section 2K2.1 is generally used -- we see it most often in
25 cases of a felon in possession of a firearm, where we have a

1 drug dealer trying to protect his stash, or something like
2 that. We sometimes even see cases where it's just a hunting
3 rifle. I've had cases in this court like that, where they were
4 going to go hunting; hunting for deer or elk. Not for people.

5 The court has already highlighted in this hearing that
6 Special Agent Greg Rogers, who has 25-plus years as a special
7 agent, and I think he said 20-plus years as an undercover
8 agent, has investigated, as he described, very dangerous
9 drug-trafficking organizations, and other types of militia-type
10 extremists like Mr. Wolf. Agent Rogers had never even heard of
11 this kind of gun. He didn't know if this kind of gun even
12 existed. He had to go back and look it up on the Internet.

13 He also testified, Agent Rogers, in his experience, he had
14 never had an individual so eager and willing and ready to move
15 forward and ready to acquire that type of dangerous weapon.
16 Within the first couple of meetings, Mr. Wolf was already
17 asking for this kind of thing in moving forward in his plan.

18 Agent Rogers testified that if anything like that happens,
19 it generally takes quite a while to lead up to something like
20 that, when he's involved as an undercover agent.

21 Now, does 2K2.1 address all the characteristics of this
22 firearm? And I suggest that it does not. This is one of the
23 most dangerous weapons that Mr. Wolf could get his hands on.
24 It had multiple illegal characteristics, and I highlighted this
25 in our sentencing memo, that, yes, it takes into account the

1 fact that it was a machine gun. But it does not take into
2 account that it had an additional illegal capability, of that
3 being a sawed-off shotgun.

4 Nor does it take into account that Mr. Wolf wanted to
5 attach a flamethrower to it.

6 For those reasons, and I gave some examples of -- tried to
7 make some analogy with maybe an obliterated serial number. I
8 also indicated that sometimes an upward departure under the
9 guidelines is suggested when a weapon is dangerous, extremely
10 dangerous.

11 And so I would suggest that we don't have to adjust the
12 guidelines here, but that that needs to be taken into account
13 under 3553(a), under the nature and circumstances of the
14 offense.

15 And then, I also indicated in my sentencing memo, Your
16 Honor, that this case is one where we have official victims, or
17 that was the intent. The intent of Mr. Wolf was to kill public
18 officials. He said it right before he took possession of the
19 gun. And then after he took possession of the gun, he said he
20 needed to kill the head of the snake.

21 And that one statement by itself doesn't necessarily say
22 anything. But when you look at the context of what he's
23 talking about, the conversation he just had about his
24 animosity, his hatred, whatever, for the government; local,
25 state, federal. That's what he's talking about. And he makes

1 that statement in here right before taking possession of the
2 gun. Mr. Wolf says: "Well, once again, the concept is whole.
3 You don't have to take over the town. All you got to do is
4 kill the government."

5 Agent Rogers: "Right."

6 Wolf: "And I guarantee you, the first few politicians and
7 judges that have their heads blown off -- yeah -- the rest of
8 them are going to go into hiding. If they don't go into hiding
9 -- if they go into hiding, they can't do shit."

10 Agent Rogers: "Right."

11 Wolf: "Ah --"

12 Agent Rogers: "They can't sit around and, ah, sign shit
13 and make it --"

14 Wolf: "What -- what like-minded sheriff or police is
15 going to go out and uphold the law when he knows he could get
16 his head blown off?"

17 So when he says right after he takes possession of the
18 gun: "I'm going to kill the head of the snake," we know what
19 he's talking about. He reaffirms his intent to use this
20 dangerous weapon to kill public officials.

21 So, when the guidelines suggest a six-level enhancement
22 for official victims, and I would suggest that the guidelines
23 put a significant weight on protecting those public officials,
24 those official victims, and that needs to be taken into account
25 here. And it's not taken into account under 2K2.1 as the

1 guidelines are currently calculated.

2 One of the factors under 3553(a) is protection of the
3 public. Mr. Wolf says: "I don't believe in anything that's
4 not extreme." When he talks about that, he's talking about in
5 the context of dropping 500 pounds of napalm through the roof
6 of the Gallatin County Courthouse and roasting marshmallows on
7 it. He says his extreme movement is "wiping that place out and
8 then move to the next building."

9 And then when those people at that committee of safety
10 meeting try to talk him down a little bit, Your Honor, you
11 heard it on the recordings that we played for the jury at
12 trial, he says: "That's -- that's the problem between you and
13 me." He says: "When you fail," and they're talking about
14 maybe we should try to do things more lawfully, maybe we should
15 file some paperwork, whatever, he says: "When you fail, I will
16 succeed" in his extreme movement. He's trying to convince them
17 how committed he is.

18 And then he says to them, too, right around that same time
19 during the recording: "I'm not the good person people think I
20 am."

21 Your Honor, is there a need to protect the public in this
22 case? There is a huge need to protect the public in this case.
23 The Department of Justice as a whole, the FBI, the U.S.
24 Attorney's Office, all of us here today, believe that Mr. Wolf
25 poses a very large and extreme danger to the public.

1 We believe you should take him at his word when he says
2 that he's going to do these things. This one factor alone
3 under 3553(a) justifies a sentence of a hundred and twenty
4 months.

5 The local law enforcement officers have indicated to Agent
6 Deurmeier, in this time that Mr. Wolf has been in custody, how
7 relieved they are that they don't have to look over their
8 shoulders, because he's been incarcerated for the last year.

9 There is a great need to protect the public.

10 One of the factors under 3553(a) is deterrence. Your
11 Honor, Mr. Wolf has been in custody now for almost a year. I
12 think the presentence report says 345 days. And I suggest that
13 there's been no change of attitude; no backing down from where
14 he was before he was arrested.

15 We attached to our sentencing memo one of the letters he
16 wrote to Mr. Gary Hunt, who Mr. Werner called extreme, and we
17 agree with that position, Gary Hunt is extreme.

18 But it's a letter, as you read it, there's no remorse,
19 there's no contrition, there's no, "hey, I feel bad about
20 this." You know -- anyway there's nothing in there that
21 suggests that he's had a change.

22 And a sentence, at least according to the defendant's
23 sentencing memo of 27 to 33 months, we believe is not even
24 anywhere near sufficient to promote the need for deterrence,
25 both specific to Mr. Wolf and to other like-minded people like

1 Mr. Hunt, or others, that may be inclined to carry forward
2 violent acts like this, because of their political motives.

3 What type of sentences are available here, Your Honor?

4 Well, we're asking for a hundred and twenty months. We're not
5 asking for 240. And certainly, that's an available sentence to
6 the court in this case. You could run both counts consecutive.

7 We're not asking for that.

8 In my talk with colleagues and things as we were
9 discussing this case, one of them said: "Well, if we're going
10 to ask for a hundred and twenty months, what do we do with
11 somebody else who has a higher criminal history than Mr. Wolf,
12 if you're asking for the statutory maximum?"

13 Well, my response to that is that we're not asking for the
14 maximum here. There's 240 months available.

15 But what we're asking for is a sentence that will protect
16 the public. There's these other factors that weigh into the
17 need for that hundred-and-twenty-month sentence.

18 That's why we're considering them all together as a whole.
19 And had Mr. Wolf taken another step, this guideline calculation
20 would have been wholly different. In fact, as the draft
21 presentence report went through the process, Your Honor, there
22 was a calculation that came out much, much higher, because it
23 was close to whether he'd gone forward with an attempt to do
24 these other things.

25 We ultimately agreed that the law did not allow -- show

1 that there was an attempt. But had there been an attempt; had
2 Mr. Wolf taken another step, not been arrested immediately upon
3 taking possession of that gun, this would have been a totally
4 different guideline calculation.

5 And so my response to that question of "what do we do with
6 somebody who's done more?" Well, the guidelines do account for
7 that when they do more. The guidelines provide for that.

8 It's a complicated calculation, but you go to 2X1.1 and it
9 takes you back to the underlying assault or homicide provisions
10 under the guidelines.

11 So if Mr. Wolf had gone further, this would be a different
12 guideline calculation, and we may be asking for more than a
13 hundred and twenty months.

14 The last factor I want to address, Your Honor, is to
15 promote respect for the law. And I would suggest that Mr. Wolf
16 has no respect for the law. As I questioned him on
17 cross-examination, it was his own interpretation of the law.
18 And we kind of went back and forth a little bit about that.

19 About, you know, he went to the UN, went to the Attorney
20 General, he went to the FBI, went to marshals, went to several
21 different places to try to get people to help him. And they
22 told him that what he wanted to do was not within the bounds of
23 the law.

24 But he said that he interprets the law based upon -- he
25 does things based upon his own interpretation of the law. And

1 people come to him for interpretation of the law, and he seems
2 to think that he can use the Constitution or various other laws
3 to justify his motives. And when they don't agree with him,
4 then that seems to make him angry, and he's going to acquire a
5 fully automatic shotgun and take matters into his own hands and
6 kill the head of the snake, hoping that will do away with the
7 problem.

8 Your Honor, I guess I'll end there. But I would urge the
9 court to sentence Mr. Wolf to a hundred and twenty months. We
10 believe that a hundred and twenty months is necessary to
11 protect the public, to serve the ends justice in this case. I
12 realize a lot of this is talk. But it gives you his clear
13 intent. It tells you what he's going to do. And the court is
14 in a position where it has to try to make that determination.
15 Is it safe to send Mr. Wolf out onto the streets, given what he
16 said he's going to do? I submit that it's not.

17 Thank you, Your Honor.

18 THE COURT: Mr. Werner.

19 MR. WERNER: Not every gun case, Your Honor -- in not
20 every gun case, in not so many gun cases, that four-point
21 enhancement is applied.

22 And that's significant here, Judge. And my arguments
23 concerning that this was about his intent, I maintain those.

24 The enhancement, the 41 to 51 months, to say that's not
25 going to deter someone is -- goes against common sense. This

1 is a man who's never committed an offense before in his life.

2 That's not going to deter him? Of course, it's going to
3 deter him.

4 And if the government thinks this is such an extreme case,
5 that enhancement is pretty extreme. So that has penalized him
6 plenty. And it's penalized him enough.

7 And the government goes on to conflate these various acts,
8 things he said, like, well, he's not going to shoot somebody at
9 300 yards -- and he's going to shoot somebody at 300 yards.
10 Well, he's not going to do any of that with these shotguns,
11 either. He's not going to do all these things that they're
12 saying with this particular shotgun.

13 He thought a conflict was coming, and he wanted to be
14 ready. And that's it.

15 There is not evidence of intent beyond his talk, his
16 bluster, and his blather. There isn't. And the judge -- the
17 court -- you credited him with his words hurting him. So that
18 that enhancement should sting him. And that's where it should
19 stay. That's where it should end.

20 This is a guideline upward departure of twice -- more than
21 twice what the guideline range is.

22 That's extreme. That doesn't match what the facts are
23 here. Especially when, I will repeat: There is simply no
24 history of his demonstrated acts of violence. There aren't.
25 And yes, he talked. And he talked. And he's been penalized

1 for that talk. But he's being penalized enough.

2 The conflation continues. Well, he was going to -- oh, he
3 had the intent to attach that flame- -- my gosh, he was so
4 taken with Greg Rogers, he would have said anything to that guy
5 to impress him.

6 He was talking. He never had any flamethrower, any
7 capability of even doing anything like that. But all these
8 things the government just likes to keep snowballing and
9 snowballing and snowballing and playing on fears and -- you
10 know what? The concerns there, Judge, the sentencing guideline
11 range is going to serve every purpose of the sentencing act.

12 And yes, at trial, he said: "I didn't do this." And so,
13 well, I don't know, that's why you have a trial. I don't know
14 what the government expects William Wolf to do. When one
15 person thinks they're not guilty of this, and the government
16 does. And usually, in a case like that when they go to trial,
17 there's not like there's a lot of apologies afterwards. And
18 yes, he has the same sentiments in terms of his guilt, which
19 does not say that he had the intent to do what the government
20 says that he had the intent -- intent to do what he was going
21 to do.

22 And the court was right. He didn't commit any assaults.
23 But that's not the point. But the point is he didn't have the
24 intent to do that, either. Not just by talking.

25 Forty-one to 51 months, Your Honor, penalizes him heavily

1 from what the guideline range should have been. And it's
2 penalized him for the talk and for the intent that the court
3 thought he had.

4 So, to then pile on top of this, such an extreme
5 enhancement would be improper. And I'm asking the court not to
6 do that.

7 Thank you.

8 THE COURT: Mr. Wolf, do you have anything you wish
9 to say before I impose sentence?

10 THE DEFENDANT: Yes, ma'am, I do.

11 Do I say it here or step up to the podium?

12 THE COURT: You can say it right there, please.

13 THE DEFENDANT: Thank you, ma'am.

14 I want you to please listen very carefully to what I say.

15 The trial of William Krisstofer Wolf has culminated in two
16 facts: The paid informant, Ed Gray's, testimony and
17 infringement on free speech and fair impartial trial.

18 On December 18th, 2014, in a debriefing of a recorded
19 meeting in Four Corners, Montana, the paid informant, Ed Gray,
20 made the statement that I wanted, quote, "a Russian fully
21 automatic shotgun." Specifically, a Saiga. That recorded
22 meeting by FBI agent Greg Rogers as entered into evidence, has
23 no such statement.

24 In 22 months of FBI recorded statements, I only ever
25 request a, quote, "Russian automatic shotgun."

1 This is not an illegal request. If it were, the Model
2 1911, .45 ACP, the old Army .45, would be illegal, because the
3 letters A-C-P stand for automatic Colt pistol, which is not
4 fully automatic. It is still used today. And sold, along with
5 the Ruger automatic, Sig Sauer automatic, and Kimber automatic.

6 However, in those 22 months of FBI recorded conversations
7 and meetings, there is never, never a mention of a Russian --
8 a, quote, "Russian fully automatic shotgun, specifically, a
9 Saiga."

10 Therefore, the statement made by Ed Gray in the debriefing
11 on December 18, 2014, as referenced by the prosecution today,
12 can only result in one conclusion: Ed Gray and I had
13 unrecorded deal-defining conversations, as I never mention a
14 Russian Saiga fully automatic shotgun.

15 This FBI evidence -- this is not my evidence, this is the
16 FBI's own documentation -- is supported by telephonic records,
17 I asked my defense team to subpoena, that would provide there
18 were unrecorded conversations.

19 However, Ed Gray on the stand, under oath, testified that
20 there were no -- repeat -- no unrecorded conversations or
21 meetings.

22 Ed Gray testified that on December 18th, 2014, I told he
23 and Agent Rogers I wanted the Russian Saiga fully automatic
24 shotgun.

25 The recording proves that testimony and the statement on

1 December 18th, 2014, debriefing, to be a direct lie under oath.

2 An unrecorded deal-defining conversation violates the
3 wiretap rules.

4 The prevailing reason for my conviction is based on the
5 verifiable, undisputed, recorded perjurious testimony and
6 debriefing statement by Ed Gray, which is paramount to
7 derivative entrapment. This renders Ed Gray's testimony
8 uncredible (sic) and inadmissible.

9 To cover for this uncredible (sic) testimony and
10 debriefing of Ed Gray, the Department of Justice repeatedly
11 presented testimony and evidence to establish a proclivity
12 toward my bad character. However, the FBI documents and
13 recordings clearly show that I had no proclivity or
14 predisposition to commit a crime. As a matter of FBI
15 documented and recorded fact, it clearly shows the FBI, through
16 various informants, attempted to induce me into committing
17 crimes of manufacturing/distributing grenades, rocket
18 propellants, RPGs, and explosives, as well as helping an FBI
19 informant acquire a model -- a Glock Model 18, P18, fully
20 automatic pistol.

21 I responded on an FBI audio recording: There was no need
22 for a fully automatic weapon.

23 This recorded statement establishes two things: One, I
24 know the difference between a fully automatic and an automatic.
25 Secondly, it clearly establishes that I had no proclivity or

1 predisposition to purchase and/or commit an illegal act of
2 owning a fully automatic firearm.

3 This harmful error occurred with repeated inclusion of
4 testimony and evidence by the Department of Justice, ultimately
5 exposing the jury to evidence that was persuasive, but
6 inadmissible, that it so aroused the emotions of the jury that
7 a calm and logical reasoning was abandoned; creating a biased
8 and a prejudicial jury, thereby denying me a
9 constitutionally-protected fair and impartial trial.

10 This immaterial, irrelevant, and harmful evidence and
11 testimony created undue prejudice, which caused my defense team
12 to spend over 500 hours trying to review for my defense.
13 However, this harmful, immaterial, and irrelevant testimony
14 attacking my freedom of speech, expression, assembly with
15 like-minded people, and my freedom of the press and my right to
16 redress grievances without interference, infringement, or
17 restriction by the government or government intervention is
18 protected by Article 1 of the Bill of Rights.

19 Yet, the agencies of the federal government did exactly
20 that, as testified to by FBI Agent Matt Deurmeier's 25-month
21 investigation and subsequent Department of Justice introduction
22 of my political views on government corruption. Specifically,
23 abuse of power, judicial and political misconduct, items that
24 are not illegal to own or the historical or potential current
25 or future or open discussion, namely a flamethrower.

1 My very lawful and constitutional redresses of grievances
2 and my views and opinions of current political, futuristic
3 patriotic events.

4 These protected rights are not derived from recent groups
5 like Black Panthers chanting "pigs in blanket; fry them like
6 bacon," which is a direct reference to flamethrowers and their
7 hypothetical use; or Black Lives Matter, who said: "If you
8 don't start holding yourself accountable, more like this will
9 happen," in response to the execution-style murder of a
10 sheriff; or Louis Farrakhan calling for 10,000 young men to do
11 what is necessary. Or even the Reverend Al Sharpton leading a
12 chant in Ferguson, Missouri, of: "What do we want? Dead cops.
13 When do we want it? Now." Who then gets invited to the White
14 House for dinner.

15 These protective rights are derived from the founding
16 documents. In every stage of these oppressions, we have
17 petitioned for redress in the most humble terms. Our repeated
18 petitions have been answered by repeated injury. We have
19 warned them from time to time of attempts by their legislature
20 to extend an unwarrantable jurisdiction over us. That whenever
21 any form of government becomes destructive of these ends, it is
22 the right of the people to alter or to abolish it, and to
23 institute new government.

24 But when a long train of abuse and usurpations, pursuing
25 invariably the same object, evinces a design to reduce them to

1 utter despotism. It is their right; it is their duty to throw
2 off such government and provide new guards for their future.
3 Blacks Law is very clear on a right where a corresponding duty
4 is invoked.

5 All the exercise of my free speech that the Department of
6 Justice used against me to prejudice the jury is derived from
7 that founding document, unanimously declared July 4th, 1776.
8 It is the Declaration of Independence, and it is the bedrock of
9 America. You may not like what I have to say, but it is my
10 protected right and shall not be infringed. To inflict further
11 punishment upon me for exercising my rights is double jeopardy
12 and violates Article 8 of the Bill of Rights of excessive fines
13 and penalties.

14 The use of this inflammatory, irrelevant, and immaterial
15 testimony, along with the fact that Agent Greg Rogers, as
16 recorded by the FBI, never verbally expressed that the firearm
17 he was selling was fully automatic, and that only inferred that
18 a fully automatic was illegal.

19 In fact, he went to the extreme of invoking that the
20 firearm was legally converted, not inverted, as testified to by
21 the federal gunsmith, makes his actions entrapment by estoppel.

22 Thereby, resulting in illegal arrest. That in turn
23 resulted in a prejudicial and impartial jury. The facts as
24 evident in this FBI document, along with many others my defense
25 team could not bring forth, due to 500-plus hours spent trying

1 to prepare a defense against irrelevant, immaterial, and
2 harmful and ultimately prejudicial testimony, as well as proven
3 lies under oath by Ed Gray, deprived me of a
4 constitutionally-protected right to a fair and impartial trial.

5 This obvious harmful error can and should be corrected by
6 this court this very instant, in compliance with its oath to
7 protect and defend and uphold the Constitution as affirmed in
8 the 1803 Marbury versus Madison ruling, and not passed over
9 ultimately turning this into a manifested constitutional error
10 to a higher court.

11 May I have that paper please real quick. This is the last
12 part I will say.

13 I quote the United States versus Dunnigan, as per the page
14 11 of the sentencing memo: "A witness testifying under oath or
15 affirmation commits perjury if he gains false testimony -- if
16 he gives false testimony concerning material matter with
17 willful intent to provide false testimony rather than a result
18 of confusion, mistake, or faulty memory."

19 Page 15 of the same memorandum, lines 12 through -- 11
20 through 12, quote: "Wolf's stories about the meetings and the
21 discussions regarding the topics of a shotgun came down to Ed
22 Gray's word against -- came down to Wolf's words against Ed
23 Gray." End quote. Bryan Whittaker.

24 Lines 16 through 19 of that same page, 15: "The jury
25 instead gave full credit to Ed Gray's testimony. Wolf never

1 asked for a semiautomatic firearm, or had these alleged
2 additional meetings, conversations with Gray." Another quote
3 by Bryan Whittaker.

4 The 12/18/2014 FBI recording states only, quote: "A
5 Russian fully automatic shotgun."

6 Ed Gray's sworn debriefing on 12/18/2014, less than 15
7 minutes after the recording, states I asked for, quote: "A
8 Russian fully automatic shotgun, specifically a Saiga." End
9 quote.

10 There is no recording of this anywhere, on or before
11 12/18/2014. Because he said "specifically, a Saiga," quote,
12 "this is not a, quote, confusion, mistake, or faulty memory."
13 Therefore, Ed Gray's testimony is perjury as defined by the
14 United States versus Dunnigan.

15 This statement is supported by nine -- please hear me --
16 nine FBI documents and recordings. Specifically lines -- page
17 13, line 17 through 20; page 14, line 7 through 6, the
18 cross-examination; discovery page 142, which is the December
19 18th, 2014, debriefing; the December 18th, 2014, audio
20 recording; USA's -- 0 zero zero zero one two nine of the
21 discovery; text message on 2014; text message on -- on -- text
22 message on December 10th, 2014; text message on March 2nd,
23 2015; text message on November 25th, which supports my
24 statement on page 12, line 15; and text for a meeting and a
25 phone call on January 9th, 2015.

1 How many more does this court need to prove there were
2 unrecorded meetings and deal-defining conversations by Ed Gray
3 and myself? We currently have nine based solely on the FBI
4 facts, documents, and recordings.

5 On page 19, line 6, I quote Bryan Whittaker saying: "Wolf
6 asked him for a fully automatic shotgun." Speaking by Agent
7 Roger.

8 There is no reporting of me asking for a, quote, "fully
9 automatic shotgun."

10 Thereby, making Agent Rogers's testimony, as defined by
11 the United States versus Dunnigan, perjury also.

12 I unequivocally declare my innocence in this matter, and
13 continue to maintain I was entrapped and ultimately denied a
14 fair and impartial trial amounting to political persecution.
15 The fact that there is no statement of me asking for a fully
16 automatic shotgun, but there are two recorded statements of me
17 asking for a Russian automatic shotgun, which is not a fully
18 automatic weapon, clearly indicates that there were
19 conversations between Ed Gray and myself that define the
20 parameters and the deal of this weapon. And Ed Gray sat on
21 that stand and perjured himself repeatedly, saying there was no
22 deal-defining conversations concerning a shotgun.

23 That flag behind you, Your Honor, stands for liberty and
24 justice. And that's what I'm asking this court to consider.
25 Today -- I did talk. I did make the statements. I have never

1 once denied I made those statements.

2 But if the people like the Black Panthers, or Black Lives
3 Matter, or Louis Farrakhan, or Al Sharpton, who gets invited to
4 the White House, can make those exact same statements and not
5 be pursued by the FBI, what right do I have to be severely
6 punished for using the same statements? I asked for a Russian
7 automatic shotgun, which is not an illegal weapon to own.

8 Federal Agent Deurmeier, in conjunction with Ed Gray, said
9 that I wanted a fully automatic shotgun, yet there is no
10 recording. And I ask you to please take that into
11 consideration in your sentencing. And understand that I will
12 be exercising my appellate right with every chance I get. But
13 today, you have the chance to tell the federal government you
14 will not attack somebody's freedom of speech. You will not put
15 them in double jeopardy, or subject them to unusual fines and
16 penalties, as Article 8 declares, which is what the government
17 is asking this court to do.

18 I have not backed down, and I have not shown remorse,
19 because I did not ask for an illegal weapon. The documents and
20 recordings clearly prove that.

21 I do appreciate this chance to speak, Your Honor.

22 Thank you.

23 THE COURT: The question before the court today is
24 what is a sufficient but not greater than necessary sentence
25 that will accomplish the purposes of sentencing, which include

1 the need for the sentence to reflect the seriousness of the
2 crime, to promote respect for the law, and to provide just
3 punishment for the offense.

4 The sentence should also deter criminal conduct, protect
5 the public from future crime by the defendant, and promote his
6 rehabilitation.

7 In determining what is a sufficient but not greater than
8 necessary sentence, in addition to the advisory sentencing
9 guideline range, the court must consider the sentencing factors
10 set forth in 18 United States Code Section 3553(a).

11 And despite your protests that you did not want a fully
12 automatic weapon, Mr. Wolf, you can't get around the video of
13 Dirty firing that weapon, wherein it is clearly demonstrated
14 that that weapon is fully automatic. He runs two clips through
15 it. And he does that in a matter of -- was it 1.9 seconds, I
16 think? And he comments about that on the video.

17 Again, you watched the video with Mr. Gray. So you know
18 from that video that the weapon that Mr. -- that Dirty was
19 providing to you, at your request, was a fully automatic
20 weapon. Dirty says: "You know, our body armor isn't going to
21 count." And you say: "That's why I wanted it."

22 Your statements today that you did not want a fully
23 automatic weapon are not supported by the evidence, in my view,
24 Mr. Wolf.

25 And I saw that video. The jury saw the video. I heard

1 the comments made by you and Dirty, as did the jury.

2 Now, considering the 3553(a) factors, the nature and
3 circumstances of this offense are very serious.

4 Now, simply looking at the charge itself, possession of a
5 machine gun, that can -- that charge can cover quite a wide
6 range of factual scenarios. It could be that an individual
7 just wanted to have a machine gun, because he thinks they're
8 cool.

9 That's illegal. He would be prosecuted.

10 And you have a right to free speech. But you don't have a
11 right to speak as you did, and then take actions to carry those
12 statements out.

13 And we all have a right to free speech. But we're all
14 responsible for what we say. And you've never denied that you
15 said the things that are set forth in the Government's
16 Exhibit A.

17 And your rhetoric, as set forth in that exhibit, is really
18 quite shocking in the level of violence that you espouse
19 against law enforcement and other government officials.

20 This isn't simply a case of you illegally possessing a
21 machine gun. It is a case where your statements are part of
22 the res gestae, if you will, the totality of the circumstances
23 of these two offenses. And the court must consider those. And
24 has considered those in overruling your objection to the
25 four-level enhancement under 2K2.1, I think it's (6) -- (6)(B).

1 Is that enhancement enough? You don't have any criminal
2 history, it's true, Mr. Wolf. And certainly, looking at your
3 history and characteristics is something that the court is
4 required to do in, again, trying to determine what is a
5 sufficient but not greater than necessary sentence.

6 Whether or not you have just come to this point in your
7 life over the last few years that have -- that has caused you
8 to become so angry and so disenchanted with the government;
9 that before, you had a respect for the law, but now, you do
10 not, I don't know.

11 Could you, would you, did you intend to carry out the acts
12 that you vocalized so frequently?

13 Well, I think it's hard to look into a crystal ball and
14 know. But I think, as I stated in overruling that objection,
15 that your actions certainly demonstrate that you were willing
16 to go forward in an affirmative way in order to acquire a very,
17 very deadly, dangerous weapon.

18 And your purpose for acquiring it was to carry out the
19 threats that you were making, the statements that you were
20 making about what you would do with regard to law enforcement
21 and government officials.

22 In the Government's Exhibit A, there are 24 instances
23 where you talk about intending to kill someone; there are 26
24 instances where you talk about assaulting or engaging in
25 aggravated assault; three instances of kidnapping and arresting

1 judges. Did you carry any of those out? Not yet.

2 Did you acquire the machine gun in order to do so? I
3 believe you did.

4 Your statement, "that's why I wanted it," is very, very
5 telling, Mr. Wolf.

6 And as I've said, we're not using anybody else's -- or I'm
7 not using anyone else's statements against you, I'm using your
8 very own statements in trying to determine what is a sufficient
9 but not greater than necessary sentence.

10 And based on your statements, and in my view, how shocking
11 they are about cooking law enforcement in their Bear Cat, and
12 using the flamethrower and napalm, and "I know how to make it."
13 You, in my view, present an extremely dangerous individual.
14 And then given your belief that you and only you understand the
15 law, and that you and only you will interpret the Constitution
16 and then act accordingly to your interpretation, make you a
17 very dangerous individual and demonstrate your lack of respect
18 for the law.

19 The Constitution, yes; that is the law. But there are
20 multiple other laws in our nation. And we are a nation of
21 laws. And that's the only way that we survive without anarchy.
22 And what you were espousing was anarchy.

23 So, in just looking at the charge or the charges on their
24 face, the guidelines may seem to apply. Given the totality of
25 the circumstances and the facts of this case, in my view, they

1 do not.

2 Should you be sentenced to the maximum of 120 months?

3 Well, it's true, the court must take into consideration that
4 you don't have any criminal history. That, thank goodness, up
5 to this point, you've never acted on any of the things that you
6 have talked about doing.

7 I mean, you espoused things that even the individuals of
8 like minds who attended the community of safety meetings -- or
9 the committee of safety meetings, didn't agree with and wanted
10 to talk you out of. They were too extreme for those
11 individuals. And you said: "Well, that's just who I am."

12 And "you can try it your way, and probably won't work, and
13 then I'll come in and I'll do it my way."

14 It's a very serious offense, these charges, given the
15 context in which they were committed. And there needs to be a
16 just punishment. There needs to be a sentence that will
17 promote respect for the law in you. And there needs to be a
18 sentence that will deter criminal conduct by you, but by others
19 of like mind.

20 Sure, you can criticize your government. You can pretty
21 much say whatever you said here. And we're a wonderful country
22 because of that. But it's when you start taking steps to carry
23 out criminal acts, and then, in fact, commit a criminal act,
24 two, in fact, as you did, then you're going to be prosecuted.

25 There isn't necessarily, in my view, a reason to hope that

1 you would be deterred from this kind of criminal conduct. A
2 lengthy sentence may just further cement your beliefs that the
3 government is corrupt and that people -- public officials
4 should be killed and removed and whatnot. But perhaps that's a
5 risk I have to take. Because too lenient of sentence, then,
6 doesn't deter you or anyone else from criminal conduct such as
7 this.

8 And it wouldn't protect the public from further crimes by
9 you.

10 Will you, while you are incarcerated, come around and
11 believe that what you did was wrong? Not likely. And so, the
12 public has to be protected from you for a certain amount of
13 time. Not only through incarceration, but through supervised
14 release thereafter.

15 I thought it was an interesting analogy in the
16 government's sentencing memorandum, arguing that in addition to
17 the weapon being illegal for the fact that it was a machine
18 gun, a fully automatic shotgun, that it had an additional
19 illegal feature, that being the shortened barrel. A shortened
20 barrel specifically requested by Mr. Wolf.

21 And analogizing that to the guideline enhancement for
22 additional -- the additional illegal feature, such as an
23 obliterated serial number.

24 Obviously, that guideline enhancement does not apply here.
25 But it's worth considering, at least the level that Congress

1 has determined should be added to -- to a base offense level,
2 simply for the fact that the weapon has an obliterated serial
3 number.

4 Well, wouldn't that apply to a weapon that was a sawed-off
5 shotgun, that had the additional illegal feature of a shortened
6 barrel that is much more easily concealed, and therefore, much
7 more lethal?

8 And if the court were to follow that analogy all the way
9 through, the guideline range would be 63 to 78 months, because
10 that would increase the total offense level to 26.

11 At least something that the court, I think, is -- that
12 it's worth the court considering in trying to determine just
13 what is appropriate here.

14 Was the jury influenced by your own statements, Mr. Wolf?
15 I don't know. But -- and I'm sure that that will be one of the
16 first issues on appeal of whether all of that evidence was
17 correctly allowed in. And I look forward to the Ninth
18 Circuit's ruling on that.

19 But in my view, the evidence was appropriate in setting
20 the scene for the jury, because of your denial that you wanted
21 this fully automatic shotgun, setting the scene for the jury
22 with your own words, as to what, in fact, you really wanted and
23 what your intent was.

24 So, considering what I think are extremely aggravating
25 factors that are not adequately represented or taken into

1 consideration by a guideline sentence of 41 to 51 months, it is
2 my judgment that a sentence of 72 months is sufficient but not
3 greater than necessary in order to accomplish the purposes of
4 sentencing.

5 And in rejecting the government's argument, the court does
6 take into consideration your lack of any criminal history and
7 the fact that at some point, we may have someone with some
8 significant criminal history who will be facing these same
9 charges. And a person who presents under those circumstances
10 would certainly qualify for a more severe sentence.

11 Are you requesting any specific facility, Mr. Werner?

12 (A brief off-the-record discussion was had between
13 Mr. Werner and the defendant at counsel table.)

14 MR. WERNER: The facility at Sheridan Oregon, Your
15 Honor.

16 THE COURT: I will recommend that the Bureau of
17 Prisons place you in the facility located at Sheridan, Oregon.

18 Upon your release from imprisonment, you shall be placed
19 on supervised release for a term of three years. And both the
20 custody sentence and the supervision sentence are to run
21 concurrently on each count.

22 Within 72 hours of your release from custody of the Bureau
23 of Prisons, you shall report in person to the probation office
24 in the district to which you are released.

25 While on supervised release, you shall not commit any

1 federal, state, or local crimes, and you shall not possess a
2 controlled substance.

3 You are prohibited from owning, using, or being in
4 constructive possession of firearms, ammunition, or other
5 destructive devices while on supervision and any time after the
6 completion of the period of supervision, unless granted relief
7 by the Secretary of the Treasury.

8 You shall cooperate in the collection of your DNA as
9 directed by your probation officer.

10 Further, you shall comply with the standard conditions of
11 supervision as recommended by the United States Sentencing
12 Commission and which have been approved by this court.

13 You shall also comply with the following special
14 conditions:

15 You shall participate in a program for mental health
16 treatment as deemed necessary by your probation officer until
17 such time as you are released from the program by your
18 probation officer.

19 You are to pay all or part of the cost of this treatment
20 as determined by your probation officer.

21 You shall submit your person, residence, place of
22 employment, vehicles, and papers, to a search, with or without
23 a warrant, by any probation officer, based on reasonable
24 suspicion of contraband or evidence in violation of a condition
25 of release.

1 Failure to submit to search may be grounds for revocation.

2 You shall warn any other occupants that the premises may
3 be subject to searches pursuant to this condition.

4 You shall allow seizure of suspected contraband for
5 further examination.

6 You shall be restricted from Park County and Gallatin
7 County, Montana, without prior written approval from the United
8 States Probation Office.

9 I find that you do not have the ability to pay a fine.
10 And I hereby waive the fine.

11 However, you are ordered to pay to the United States a
12 special assessment of \$200, which shall be due immediately.

13 During the period of incarceration, you are ordered to pay
14 criminal monetary penalty payments at the rate of not less than
15 \$25 per quarter.

16 Those payments shall be made through the Bureau of
17 Prisons' Inmate Financial Responsibility Program. And they
18 shall be sent to the clerk of this court.

19 Mr. Wolf, you maintain your right to appeal all of the
20 issues related to your trial and sentencing in this matter.

21 If you wish to appeal, you must file your notice of appeal
22 within 14 days of today's date, or you will have waived that
23 right.

24 Do you understand that?

25 THE DEFENDANT: The appeals will be filed.

1 THE COURT: Any legal objection to the sentence,
2 Mr. Whittaker?

3 MR. WHITTAKER: No, Your Honor.

4 MR. WERNER: No, Your Honor.

5 THE COURT: You are remanded to the custody of the
6 United States Marshals to carry out the judgment of the court.
7 And we're adjourned.

8 (The proceedings in this matter were adjourned at
9 12:32 p.m.)

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13 C E R T I F I C A T E

14
15 I certify that the foregoing is a correct transcript from
16 the record of proceedings in the above-entitled matter.

17 /s/ Tina C. Brilz, RPR, FCRR

18 Dated this 19th day of April, 2016.
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